

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA }
v. } } Criminal Case No.:
ROBERT LEE PERNELL } } 3:09 CR 452

July 23, 2014

COMPLETE TRANSCRIPT OF PLEA
BEFORE THE HONORABLE ROBERT E. PAYNE
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

Olivia L. Norman, Esquire
OFFICE OF THE UNITED STATES ATTORNEY
919 East Main Street
Suite 1900
Richmond, Virginia 23219

Counsel on behalf of the United States

Charles A. Gavin, Esquire
DESKEVICH, GAVIN & HARRIS, P.C.
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Counsel on behalf of the Defendant

KRISTA M. LISCIO, RMR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

1 (The proceeding commenced at 1:59 p.m.)

2 THE CLERK: Criminal Number 3:09 CR 452-01.

3 *United States of America v. Robert Lee Pernell.*

4 Ms. Olivia Norman represents the United States.

5 Mr. Charles A. Gavin represents the defendant.

6 Are counsel ready to proceed?

7 MS. NORMAN: The United States is ready, Your
8 Honor.

9 MR. GAVIN: The defendant is ready, Your Honor.

10 MS. NORMAN: Good afternoon, Your Honor.

11 THE COURT: Good afternoon.

12 MS. NORMAN: We are here for the anticipated
13 plea of guilty by Mr. Robert Lee Pernell to a single count
14 criminal information, which was filed with the Court
15 today.

16 There is -- that criminal information charges
17 that Mr. Pernell did possess a firearm in furtherance of,
18 and did use, carry, brandish, and discharge a firearm
19 during and in relation to a felony drug trafficking crime.
20 That all being in violation of Title 18, United States
21 Code, Section 924(c).

22 This is a written plea agreement that sets forth
23 the penalties for this offense. The penalties
24 specifically are a minimum mandatory term of 25 years
25 imprisonment on this count, up to a maximum term of life

1 imprisonment, a fine of \$250,000, and five years of
2 supervised release.

3 There's also a written statement of facts in
4 support of the plea agreement.

5 Mr. Pernell has filed a waiver of indictment
6 based on the modified 924(c) charge. There is also a
7 separate exhibit to the plea agreement. I want to make
8 sure it's clear on the record that that separate exhibit,
9 that the plea is not contingent on that; however, it is an
10 agreement entered by the parties on this day, and that the
11 United States and defense counsel will maintain a copy of
12 this agreement. So, the plea itself is not contingent on
13 that, but it is something that we entered today.

14 THE CLERK: Who has the originals?

15 MS. NORMAN: We do.

16 MR. GAVIN: We do.

17 THE COURT: Are they at the desk? They should
18 be at the lectern.

19 MS. NORMAN: They are.

20 MR. GAVIN: They're here.

21 MS. NORMAN: Yes, sir.

22 THE CLERK: You don't need to swear him. He's
23 going to affirm.

24 Under penalty of perjury you do affirm that the
25 answers to the questions you're about to be asked by the

1 Court shall be the truth, the whole truth, and nothing but
2 the truth?

3 MR. PERNELL: Yes.

4 THE CLERK: Thank you.

5 THE COURT: Your full and correct name is Robert
6 Lee Pernell, is that correct?

7 MR. PERNELL: Yes.

8 THE COURT: And are you the person named as
9 Robert Lee Pernell -

10 MR. PERNELL: Yes.

11 THE COURT: - in the criminal information in
12 this case?

13 MR. PERNELL: Yes.

14 THE COURT: Now, before accepting your proposed
15 waiver of indictment and plea of guilty to a criminal
16 information, the Court is obligated to inform you of what
17 your rights are, and to be satisfied that you understand
18 what your rights are, and to be sure that you are waiving
19 the indictment and entering a plea of guilty freely and
20 voluntarily with a full understanding of what your rights
21 are.

22 And you have sworn, Mr. Pernell, to answer
23 truthfully the questions that I'm going to put to you so I
24 can make -- be certain you know what your rights are, and
25 that you're guilty of the offenses to which you are

1 pleading. If any of your answers turn out to be untrue,
2 they may later be used against you in a prosecution for
3 perjury; do you understand that?

4 MR. PERNELL: Yes.

5 THE COURT: How old are you, Mr. Pernell?

6 MR. PERNELL: Forty-three.

7 THE COURT: And how far did you go in school?

8 MR. PERNELL: Tenth grade.

9 THE COURT: And you're able to read, write, and
10 speak English, are you not?

11 MR. PERNELL: Yes.

12 THE COURT: Do you understand what I'm saying
13 now?

14 MR. PERNELL: Yes.

15 THE COURT: Are you under the influence of any
16 drugs, narcotics, marijuana, or alcohol this afternoon?

17 MR. PERNELL: No.

18 THE COURT: Now, a presentence report was
19 prepared earlier, and it says that you were treated by a
20 psychologist. And that in 2008, you were diagnosed with
21 post-traumatic stress disorder, according to a report that
22 you gave, and that you were placed on medication once for
23 that diagnosis but you aren't currently using medication.
24 Is all that correct?

25 MR. PERNELL: Yes.

1 THE COURT: And other than that, have you been
2 -- received any mental health treatment of any kind?

3 MR. PERNELL: While at Pamunkey Regional, basic
4 counseling.

5 THE COURT: Counseling about what?

6 MR. PERNELL: Just making sure that I'm still
7 maintaining, I guess. Not having any serious issues or
8 conflicts.

9 THE COURT: And after that counseling, have you
10 been told you're having any conflicts or issues or have
11 you said that you are?

12 MR. PERNELL: No. They gave me pamphlets and
13 paperwork to utilize for my own benefit because they don't
14 come that often.

15 THE COURT: Are you taking any medication at
16 all?

17 MR. PERNELL: I'm not taking any medication, no.

18 THE COURT: And in the presentence report it
19 says you have no history of drug or alcohol abuse. Is
20 that still correct?

21 MR. PERNELL: Yes.

22 THE COURT: Now, you have got in front of you
23 there a copy of the criminal information. Do you
24 understand what the charge is in there, and that's
25 possessing a firearm in furtherance of, and use, carry,

1 and brandishing and discharge the same firearm during and
2 in relation to a felony drug trafficking crime; do you
3 understand that?

4 MR. PERNELL: Yes.

5 THE COURT: Now, that's a felony. Do you
6 understand that?

7 MR. PERNELL: Yes, sir.

8 THE COURT: It carries with it a term of
9 imprisonment, mandatory minimum of 25 years imprisonment,
10 which has to run consecutive to any other term of
11 imprisonment you're serving, and a maximum of life
12 imprisonment, a fine of \$250,000, full restitution, a
13 special assessment, and five years of supervised release.

14 Do you understand that that's what the -- is
15 charged in the criminal information and what the penalties
16 are?

17 MR. PERNELL: Yes, sir.

18 THE COURT: Now, under the Constitution you have
19 a right not to be charged with any felony at all unless a
20 grand jury first finds, by returning an indictment, that
21 there's probable cause to believe that a crime has been
22 committed, and that you've committed it.

23 Now, of course you can waive that right and
24 consent to being charged by way of the information that
25 has been filed by the United States Attorney. But if you

1 do not waive the right of indictment, then the government
2 may, if it so desires, present the case to the grand jury
3 and request the grand jury to indict you. And the grand
4 jury is composed of at least 16 people, and not more than
5 23. And at least 12 of those grand jurors has to find
6 that there is probable cause to believe that you committed
7 the crime before it would indict you; do you understand
8 all that?

9 MR. PERNELL: Yes.

10 THE COURT: And the grand jury might or might
11 not indict you. There's no way of telling since it's not
12 going to a grand jury; do you understand that?

13 MR. PERNELL: Yes.

14 THE COURT: Now, if you choose to waive the
15 indictment, as you have indicated that you want to do, the
16 case can of course proceed by way of the information. You
17 understand that, don't you?

18 MR. PERNELL: Yes.

19 THE COURT: Now, there is at the lectern there
20 in front of you a document called waiver of indictment.
21 Do you see that?

22 MR. PERNELL: I do.

23 THE COURT: And then above your typed name
24 there's a signature. Is that your signature?

25 MR. PERNELL: Yes, sir.

1 THE COURT: Did you read that document before
2 you signed it?

3 MR. PERNELL: I did.

4 THE COURT: Did you understand it?

5 MR. PERNELL: Yes, sir.

6 THE COURT: Did you talk with your lawyer about
7 it?

8 MR. PERNELL: I did.

9 THE COURT: And have you discussed waiving the
10 indictment, and your right to an indictment, and
11 proceeding by way of an information with Mr. Gavin?

12 MR. PERNELL: Yes, sir.

13 THE COURT: Has anybody made any threats or
14 promises to you to make you waive your right to
15 indictment?

16 MR. PERNELL: No, sir.

17 THE COURT: And have you talked fully with
18 Mr. Gavin about the right?

19 MR. PERNELL: Yes, sir.

20 THE COURT: Do you need to talk with him any
21 further about whether you should waive your right to
22 indictment?

23 MR. PERNELL: No, sir.

24 THE COURT: And is it your desire to waive your
25 right to indictment by a grand jury?

1 MR. PERNELL: Yes, sir.

2 THE COURT: And, Mr. Gavin, do you know of any
3 reason why Mr. Pernell should not waive the right to
4 indictment?

5 MR. GAVIN: No, sir.

6 THE COURT: All right.

7 The defendant has signed the waiver form. And
8 that will be tendered and filed with the Court.

9 Thank you.

10 The United States, having agreed the defendant
11 has knowingly waived his right to indictment on the advice
12 of competent counsel, the Court approves the waiver and
13 the case may proceed on the basis of the criminal
14 information.

15 Now, we have discussed the penalty for the
16 charge in the criminal information, and you understand
17 that, you've said. I want to know now if you have had an
18 opportunity to discuss your case and this charge against
19 you with Mr. Gavin?

20 MR. PERNELL: Yes, sir.

21 THE COURT: And the record will reflect he's
22 represented you for some time, and you've been to Court on
23 a number of occasions. Have you told Mr. Gavin all the
24 facts about the case that you know?

25 MR. PERNELL: Yes, sir.

1 THE COURT: All right. And you and Mr. Gavin
2 have discussed those facts, and any possible defenses that
3 may come or may be available to you as to the charge, is
4 that correct?

5 MR. PERNELL: Yes, sir.

6 THE COURT: And do you feel that Mr. Gavin
7 understands the case, your side of it, and what it's all
8 about?

9 MR. PERNELL: I believe so.

10 THE COURT: Are you satisfied with the
11 representation that Mr. Gavin has given to you in this
12 matter?

13 MR. PERNELL: Yes.

14 THE COURT: Now, there is a plea agreement in
15 front of you and a statement of facts. And on the back
16 page of the last numbered page, Page 9, there is your
17 signature above your name, Robert Lee Pernell. Is that
18 your signature?

19 MR. PERNELL: Yes.

20 THE COURT: And on the statement of facts, on
21 Page 2, above your typed name, there's a signature. Is
22 that your signature?

23 MR. PERNELL: Yes.

24 THE COURT: Now, did you read those documents
25 before you signed them?

1 MR. PERNELL: Yes.

2 THE COURT: Do you understand them?

3 MR. PERNELL: Yes.

4 THE COURT: Did you talk to Mr. Gavin about
5 them?

6 MR. PERNELL: Yes.

7 THE COURT: Did you ask him any questions that
8 you had about them?

9 MR. PERNELL: I did.

10 THE COURT: Did you understand the answers that
11 he gave you?

12 MR. PERNELL: Yes, sir.

13 THE COURT: Has he given you advice in this
14 matter?

15 MR. PERNELL: Yes.

16 THE COURT: Did you understand the advice?

17 MR. PERNELL: Yes.

18 THE COURT: Before we go forward with these
19 proceedings this afternoon do you need to talk with him
20 any further about anything?

21 MR. PERNELL: No.

22 THE COURT: Now, looking at the plea agreement,
23 we have talked about Paragraph 1, so let's talk a little
24 bit more about the other parts of it. In Paragraph 6, on
25 Page 3, carrying over to Page 4, you agree to waive the

1 right of appeal on the sentence imposed in this case; do
2 you understand you're doing that?

3 MR. PERNELL: Yes.

4 THE COURT: And if you didn't make that waiver,
5 you could appeal the sentence; do you understand that?

6 MR. PERNELL: Yes.

7 THE COURT: And the United States is not waiving
8 its right to appeal the sentence, so if it doesn't like
9 the sentence they can appeal but you cannot; do you
10 understand that?

11 MR. PERNELL: Yes.

12 THE COURT: And in that second part of that
13 paragraph you're waiving your right to request and receive
14 records pertaining to the investigation or prosecution of
15 the case; do you understand that?

16 MR. PERNELL: Yes.

17 THE COURT: And under Paragraph 8, there are
18 provisions about the monetary penalties. Do you
19 understand those?

20 MR. PERNELL: Yes.

21 THE COURT: In Paragraph 10, you agree to a
22 forfeiture agreement of any assets that can be a part of
23 the sentence, all interest in any robbery-related asset
24 that you own or of what you exercise control of; do you
25 understand that?

1 MR. PERNELL: Yes.

2 THE COURT: And then Paragraphs 11 and 12, you
3 are, in essence, giving up all your rights to contest any
4 forfeiture proceedings; do you understand that?

5 MR. PERNELL: Yes, sir.

6 THE COURT: Paragraph 13, there's a provision
7 that says if you break the terms of the plea agreement
8 then the United States is released from its obligation.
9 They can come to court and ask the Court to find that you
10 have breached the agreement. And upon finding that you
11 breached the agreement, they can prosecute you for all
12 charges without the benefit of this plea agreement and no
13 limitations; do you understand that?

14 MR. PERNELL: Yes.

15 THE COURT: And it says that in Paragraph 14
16 that this is the entire agreement between you and the
17 United States as far as your plea agreement is concerned;
18 is that correct?

19 MR. PERNELL: Yes.

20 THE COURT: That would include, of course, the
21 statement of facts which is referred to therein; is that
22 correct?

23 MR. PERNELL: Yes, sir.

24 THE COURT: But there is also a document called
25 Exhibit 1 that I have been given. And on the sixth page

1 of that agreement signed -- I mean, you signed, it looks
2 like. Is that your signature?

3 MR. PERNELL: Yes.

4 THE COURT: Now, the United States has said that
5 your obligations under this agreement are supplemental to
6 the plea agreement according to paragraph -- the second
7 sentence in the plea agreement -- in Exhibit 1, excuse me.
8 And the United States Attorney, though, has told me that
9 this agreement -- your living up to this agreement is not
10 a contingency to the validity of your plea. Do you
11 understand that to be the case?

12 MR. PERNELL: Yes.

13 THE COURT: What do you understand Exhibit 1 to
14 require you to do?

15 MR. PERNELL: It has no bearing on my plea
16 agreement itself. If I choose to plead -- if I choose
17 just to go along with my plea agreement, I can do so.

18 THE COURT: But if you choose to proceed with
19 Exhibit 1, then what happens?

20 MR. PERNELL: I have the option to do so.

21 THE COURT: It's up to you?

22 MR. PERNELL: Right.

23 THE COURT: That's your understanding,
24 Ms. Norman?

25 MS. NORMAN: Absolutely. Yes, sir.

1 THE COURT: Mr. Gavin, that's your
2 understanding?

3 MR. GAVIN: Yes, sir.

4 THE COURT: All right.

5 Should Exhibit 1 be filed or not?

6 MS. NORMAN: It should not be, Your Honor. It's
7 because it is -- we maintain those in counsels' files
8 because the plea is not contingent upon --

9 THE COURT: All right. Then it will be returned
10 to you.

11 MS. NORMAN: Thank you.

12 THE COURT: All right.

13 Mr. Pernell, has anyone, including your counsel
14 or the United States Attorney, made any promise of
15 leniency to you, or any promise of any kind, in return for
16 the plea agreement -- a plea of guilty other than what is
17 in this plea agreement?

18 MR. PERNELL: No.

19 THE COURT: And has anyone threatened you in any
20 way to induce you to plead guilty?

21 MR. PERNELL: No.

22 THE COURT: And you do understand you're
23 pleading guilty to a felony, and that if your plea is
24 accepted you're going to be adjudged guilty of a felony
25 and that will deprive you of the civil rights of voting,

1 holding public office, service on a jury, possessing
2 firearms; do you understand that?

3 MR. PERNELL: Yes.

4 THE COURT: And then in addition to any fine or
5 prison sentence that the Court can impose in this case,
6 you can be required to make restitution to, and
7 compensate, any victim who has been -- suffered any loss
8 caused by any of the actions you're pleading guilty to; do
9 you understand that?

10 MR. PERNELL: Yes, sir.

11 THE COURT: And if restitution is made a part of
12 your sentence, it will be like a judgment against you, and
13 any property you own now or after the judgment is recorded
14 can be levied upon from now until whatever time the
15 judgment expires by law under the law of the state; do you
16 understand that?

17 MR. PERNELL: Yes.

18 THE COURT: And in addition to the cost of
19 prosecuting you and the cost of keeping -- in addition to
20 the prison sentence and the other terms I've talked about,
21 you can be assessed the cost of prosecuting you and the
22 cost of keeping you in prison; do you understand?

23 MR. PERNELL: Yes.

24 THE COURT: And you will have to pay a special
25 assessment of \$100, which is toward the court costs; do

1 you understand that?

2 MR. PERNELL: Yes.

3 THE COURT: Now, the statute here has a
4 mandatory minimum sentence which has to be imposed and a
5 maximum. The maximum is life. The minimum is 25 years.
6 But the sentencing guidelines, which are advisory, will
7 nonetheless be used in assessing what is an appropriate
8 sentence in the case; do you understand that?

9 MR. PERNELL: Yes.

10 THE COURT: And under those guidelines, the
11 Court will take into account all of your activities,
12 everything that you've done, whether they're charged or
13 not charged, whether they've been dismissed or not, and
14 consider your actual conduct, the role you played, and the
15 nature and the victims of the offense, what's happened to
16 them and whether you have engaged in obstruction of
17 justice and whether you have accepted responsibility for
18 your conduct; do you understand all that will be
19 considered?

20 MR. PERNELL: Yes.

21 THE COURT: And your criminal history will also
22 be considered; do you understand that?

23 MR. PERNELL: Yes.

24 THE COURT: Have you discussed those guidelines
25 with your lawyer, and he's explained to you generally how

1 these advisory guidelines work?

2 MR. PERNELL: Yes.

3 THE COURT: But in any event, your sentence
4 cannot be any less than the statutory minimum sentence of
5 25 years; do you understand that?

6 MR. PERNELL: Yes.

7 THE COURT: And until a presentence report is
8 prepared, and updated -- I've got a prepared one, but it's
9 got to be updated, it's not possible to tell you what your
10 actual sentence will be; do you understand that?

11 MR. PERNELL: Yes.

12 THE COURT: And you're not going to be able to
13 withdraw your guilty plea on the grounds that your lawyer
14 has told you what he thinks the sentence will be, what the
15 guidelines may provide, or what the actual sentence may be
16 and was wrong; do you understand that?

17 MR. PERNELL: Yes.

18 THE COURT: And under the law, parole has been
19 abolished. So when you're sent to prison, you're not
20 going to be released on parole; do you understand that?

21 MR. PERNELL: Yes, sir.

22 THE COURT: And you have an absolute right to
23 plead not guilty to any charge against you, and to persist
24 in any previously entered not guilty plea; do you
25 understand that? In other words, it's your absolute right

1 to plead not guilty, do you understand that, and go to
2 trial on that basis?

3 MR. PERNELL: Yes.

4 THE COURT: And if you plead guilty and go to
5 trial on that basis, you have a constitutional right to a
6 speedy public trial by a jury, and the trial. You have
7 the right to be assisted by counsel, paid for by the
8 government if you can't afford it, and the right to
9 confront and cross-examine all the witnesses against you;
10 do you understand that?

11 MR. PERNELL: Yes.

12 THE COURT: If you go forward also on a plea of
13 not guilty, you have the constitutional right to testify
14 on your own behalf and present your case by calling
15 witnesses and bringing documents here to aid in your
16 defense; do you understand that?

17 MR. PERNELL: Yes.

18 THE COURT: You have the constitutional right as
19 well not to testify at all. And if you choose to exercise
20 that right, that cannot be considered or commented upon in
21 any way in deciding whether you're guilty or not; do you
22 understand that?

23 MR. PERNELL: Yes.

24 THE COURT: And if you proceed to trial, you
25 have the right, under the Constitution, to use the full

1 power and process of the Court to compel the production of
2 evidence, witnesses and documents to help you defend
3 yourself; do you understand that?

4 MR. PERNELL: Yes.

5 THE COURT: And by pleading guilty, you're giving
6 up or waiving all the constitutional rights you and I just
7 talked about; do you understand that?

8 MR. PERNELL: Yes.

9 THE COURT: And even though you're pleading
10 guilty, the Court could impose on you the same punishment
11 for the offense to which you plead guilty as it could have
12 if you entered a plea of not guilty and been tried and
13 convicted by a jury or by the Court sitting without a
14 jury; do you understand that?

15 MR. PERNELL: Yes.

16 THE COURT: And if the Court accepts your guilty
17 plea, there's not going to be a trial of any kind.
18 There's just going to be a sentencing; do you understand
19 that?

20 MR. PERNELL: Yes.

21 THE COURT: If you plead -- if you were to plead
22 not guilty, the United States would have the burden of
23 convincing 12 jurors beyond a reasonable doubt by
24 competent evidence that you were guilty. And they would
25 have to prove all of the elements of the crime charged in

1 the indictment that you, on or about the date alleged, in
2 the Eastern District of Virginia, possessed a firearm in
3 furtherance of, and used the firearm, carried, brandished
4 and discharged it, during and in relation to a felony drug
5 trafficking crime, in particular, the felony drug
6 trafficking crime referred to in a statement of facts in
7 Paragraph 1; do you understand that?

8 MR. PERNELL: Yes.

9 THE COURT: And if the government wanted to
10 proceed with any other charges against you, they'd have to
11 prove them beyond a reasonable doubt as well; do you
12 understand?

13 MR. PERNELL: Yes.

14 THE COURT: By pleading guilty, though, you're
15 giving up your right to have a jury decide whether you're
16 guilty or not; do you understand that?

17 MR. PERNELL: Yes.

18 THE COURT: Mr. Gavin, has Mr. Pernell been
19 competent and able to cooperate with you in the case?

20 MR. GAVIN: Yes, sir.

21 THE COURT: Have you and he discussed the facts
22 in detail?

23 MR. GAVIN: Yes, sir.

24 THE COURT: And are you satisfied that there are
25 no meritorious defenses that can be raised as to the

1 charge to which he is pleading guilty?

2 MR. GAVIN: Yes, sir.

3 THE COURT: Are you satisfied that his
4 constitutional rights have been preserved heretofore in
5 these proceedings?

6 MR. GAVIN: Yes, sir.

7 THE COURT: And as best you can be satisfied as
8 he stands there that he's not under the influence of any
9 drugs, narcotics, marijuana, or alcohol?

10 MR. GAVIN: Yes, sir.

11 THE COURT: Do you know of any reason of any
12 kind why he should not enter a plea of not guilty to the
13 charge in the criminal information?

14 MR. GAVIN: No, sir.

15 THE COURT: Well, I find that the defendant is
16 competent and capable of entering a knowing and voluntary
17 plea of guilty, just as he was competent and capable of
18 entering a knowing and voluntary waiver of the indictment,
19 and that he has been advised on those topics by competent
20 counsel.

21 And so I ask you, Mr. Pernell, to the charge in
22 Count 1 of the criminal information, how do you plead,
23 guilty or not guilty?

24 MR. PERNELL: Guilty.

25 THE COURT: Are you pleading guilty freely and

1 voluntarily because you are guilty?

2 MR. PERNELL: Yes.

3 THE COURT: I find that the defendant has
4 entered a knowing and voluntary plea of guilty, and that
5 his plea of guilty is supported by an independent basis in
6 fact. So, the Court accepts the plea. The plea agreement
7 shall be filed and accepted.

8 The defendant is adjudged guilty of the offense
9 to which he's entered a plea. Any other charges pending
10 in the case will be dismissed at the time of sentencing.

11 You may return to your seat.

12 Mr. Pernell, stand up just a minute.

13 In Paragraph 1 of the plea agreement there's the
14 word "years" that's been inserted after the numeral 25 and
15 before the word imprisonment on the fifth line of that
16 paragraph, and there are initials there. Are those your
17 initials?

18 MR. GAVIN: They're mine, Your Honor.

19 THE COURT: All right. I think I want him to
20 initial them too.

21 MR. GAVIN: May I approach?

22 THE COURT: Give this to Mr. Gavin.

23 They just put the word "years" in. Please
24 initial those, Mr. Pernell.

25 MR. PERNELL: (Complies.)

1 THE COURT: Thank you, sir.

2 Now, Mr. Pernell, I have from you a letter dated
3 July the 1st, which I will direct to be filed in the
4 record if you so desire. But I have a motion from
5 Mr. Gavin, also Docket Number 131, and a supporting
6 memorandum. Of course the United States' response is
7 there too.

8 I gather that the -- from what's just happened,
9 that the motion is withdrawn and the letter is withdrawn;
10 is that correct?

11 MR. PERNELL: Yes, sir.

12 MR. GAVIN: Yes, sir.

13 THE COURT: All right.

14 Do you want the letter placed in the record,
15 either one of you? I'll place it in the record if you
16 want.

17 MR. GAVIN: We'll withdraw the letter, Your
18 Honor.

19 THE COURT: All right. The letter is withdrawn.

20 Does that suit you, Mr. Pernell?

21 MR. PERNELL: Yes.

22 THE COURT: There is also a subpoena -- *ex parte*
23 motion for a subpoena duces tecum. I don't know that
24 that's been issued.

25 MR. GAVIN: It can be dismissed as moot, Your

1 Honor.

2 THE COURT: It should be denied as moot. All
3 right. Will do.

4 All right. Now, we need to -- there's been a
5 presentence report prepared because of the nature of the
6 preceding activity in the case, but it probably needs to
7 be updated. How long -- have you-all talked about
8 sentencing?

9 MS. NORMAN: We have, Your Honor.

10 THE COURT: You have talked to the probation
11 officer too?

12 MS. NORMAN: And we have talked to the probation
13 officer.

14 THE COURT: There's an original date already on
15 the calendar, isn't there?

16 MS. NORMAN: There is an original date of
17 August 25th, which is a Monday, for the start of trial.
18 The -- we spoke, and we are also available the week of
19 August 18th, if the Court is available.

20 The only issues that have been raised affected
21 the calculation of the advisory guideline range for a
22 robbery conviction on the previous presentence report.
23 Those would be moot with a 924(c) conviction because under
24 Sentencing Guideline 2K2.1, the advisory guideline range
25 on a 924(c) case is the minimum mandatory. So the issues

1 that go to the calculation of the advisory guideline range
2 are moot points.

3 THE COURT: Wait a minute. The convictions were
4 set aside.

5 MS. NORMAN: Correct.

6 THE COURT: So what's that got -- what are you
7 saying? We'd have a new presentence report based only on
8 the offense of conviction here?

9 MS. NORMAN: Right. That is correct. And the
10 point of it was I don't believe, based on the -- it being
11 a 924(c) count, I don't believe that we need the full 90
12 days for a new presentence report because the only
13 objections that have been previously made were made to
14 things that are now moot.

15 THE COURT: I see. And the 924(c) was Count 3
16 of the original indictment?

17 MS. NORMAN: It was. Yes, sir.

18 THE COURT: Well, when do you want to do the
19 sentencing, folks?

20 MR. GAVIN: The week of the 18th is fine, Your
21 Honor.

22 THE COURT: Do you want to do the 18th?

23 MS. NORMAN: Yes, sir.

24 MR. GAVIN: Yes, sir.

25 THE CLERK: Is there any need for a new

1 sentencing guideline order?

2 THE COURT: I don't think so.

3 THE CLERK: I don't think so either. Okay.

4 Thank you.

5 MS. NORMAN: No, sir.

6 THE COURT: Can you get an updated presentence
7 report to me in time to have a sentencing on the 21st of
8 August? That means you would have to get it in about a
9 week before that?

10 PROBATION OFFICER: I can make sure it's to you
11 at least a week prior to.

12 THE COURT: That would be fine.

13 If anybody has any objections, you need to file
14 them right away.

15 MS. NORMAN: Yes, sir.

16 THE COURT: August 21st -- do I need to have a
17 sentencing hearing -- I mean, a hearing on *U.S. v. Claire?*

18 THE CLERK: I don't know.

19 THE COURT: We don't know that yet, do we?

20 THE CLERK: No, sir.

21 MS. NORMAN: Your Honor, I'm available starting
22 at 11:30 on the 21st.

23 THE COURT: I have sentencings all that morning.

24 And I have a competency hearing set in the afternoon,
25 which if it goes forward it will go all afternoon.

1 How about the 20th at 2:30?

2 MR. GAVIN: It's available, Your Honor.

3 MS. NORMAN: Your Honor, I'm teaching a -- I'm
4 providing a training in Charlottesville from 10:00 until
5 about 12:30 that day. I'd be a little worried if there is
6 traffic. Can we set it for 3:00?

7 THE CLERK: Sure.

8 THE COURT: Is that available to you, Mr. Gavin?

9 MR. GAVIN: Yes, sir.

10 THE COURT: The sentencing will be on that date,
11 the 20th of August, at 3:00.

12 Mr. Pernell, will you stand up.

13 You have read the presentence report, and you
14 need to review it again. And then you need to review any
15 update to it and tell Mr. Gavin anything that you object
16 to so that I can have all of your objections at the time
17 of the sentencing. Otherwise, I'll take what's in the
18 presentence report as true and accurate and use that as a
19 basis for sentencing, do you understand that?

20 MR. PERNELL: Yes.

21 THE COURT: Is there anything else that needs to
22 be done at this time?

23 MS. NORMAN: No, Your Honor.

24 MR. GAVIN: No, sir.

25 THE COURT: All right.

1 Here.

2 THE CLERK: Thank you, Your Honor.

3 THE COURT: All right.

4 We'll be adjourned. Thank you very much.

5 (The proceeding concluded at 2:34 p.m.)

6 REPORTER'S CERTIFICATE

7 I, Krista M. Liscio, OCR, RMR, Notary
8 Public in and for the Commonwealth of Virginia at
9 large, and whose commission expires March 31, 2028,
10 Notary Registration Number 149462, do hereby certify
that the pages contained herein accurately reflect
the notes taken by me, to the best of my ability, in
the above-styled action.

Given under my hand this 28th day of June, 2024.

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12 Krista M. Liscio, RMR
13 Official Court Reporter
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